

PART 0—ETHICS AND CONDUCT OF DEPARTMENT OF LABOR EM- PLOYEES

Subpart A—Standards of Conduct for Current Department of Labor Employees

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APPENDIX A TO PART 0

AUTHORITY: 5 U.S.C. 301; 5 U.S.C. App. (Ethics in Government Act of 1978); sec. 501, Pub. L. 95-521, 92 Stat. 1866-1867; 18 U.S.C. 208; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR part 2634, part 2635.

SOURCE: 33 FR 10432, July 20, 1968, unless otherwise noted.

Subpart A—Standards of Conduct for Current Department of Labor Employees

SOURCE: 33 FR 10432, July 20, 1968, unless otherwise noted. Redesignated at 61 FR 57287, Nov. 6, 1996.

§0.735-1 Cross-references to employee ethical conduct standards and fi- nancial disclosure regulations.

Employees of the Department of Labor (Department) are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635, the Department's regulations at 5 CFR part 5201 which supplement the executive branch-wide standards, and the executive branch financial disclosure regulations at 5 CFR part 2634.

[61 FR 57287, Nov. 6, 1996]

§0.735-2 Conflict-of-interest laws.

(a)-(b) [Reserved]

(c) Section 208, in general, prohibits a Government employee in his official capacity from participating personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, or otherwise in any particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner, or employee or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment has a financial interest. In accordance with the provisions of section 208(b)(2), the financial interests described below are hereby exempted from the prohibition of 18 U.S.C. 208 as being too remote or too inconsequential to affect the integrity of an employee's services in a matter: the policy holdings in an insurance company and the stock or bond holdings, in a mutual fund, investment company, or bank which owns an interest in an entity involved in the matter: *Provided*, That in the case of a mutual fund, investment company, or bank the fair value of such stock or bond holding does not exceed 1 percent of the value of the reported assets of the mutual fund, investment company, or bank. In addition, the prohibitions of section 208(a) shall not apply if the employee obtains advance clearance in accordance with the requirements of sections 208.

(d) [Reserved]

[33 FR 10432, July 20, 1968, as amended at 59 FR 32611, June 23, 1994. Redesignated at 61 FR 57287, Nov. 6, 1996]

Subpart B—Post Employment Conflict of Interest

SOURCE: 48 FR 11944, Mar. 22, 1983, unless otherwise noted. Redesignated at 61 FR 57287, Nov. 6, 1996.

§0.737-1 Applicability.

This subpart is applicable to any former employee of the Department of Labor leaving Government service on or after July 1, 1979.

§0.737-2

§0.737-2 Appointment of alternate officials.

Notwithstanding any other provision of this subpart, the Secretary of Labor is authorized to perform any of the functions otherwise assigned in this subpart to the Under Secretary in any proceeding. The Secretary is also authorized to appoint as an alternate official any other officer or employee of the Department of Labor to perform functions otherwise assigned in this subpart to the Under Secretary or the Solicitor of Labor in any proceeding; except that:

(a) The functions otherwise assigned in this subpart to the Under Secretary and the Solicitor shall not both be performed by the same alternate official in the same proceeding, and

(b) The same individual shall not be appointed as both an Examiner under §0.737-5 and an alternate official under this section in the same proceeding.

§0.737-3 Initiation of administrative disciplinary hearing.

(a) Any person may, in writing, report an apparent violation of 18 U.S.C. 207(a), (b) or (c) or the regulations of the Office of Personnel Management at 5 CFR part 737 by a former employee described in §0.737-1 to the Solicitor of Labor.

(b) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information appears to be substantiated, the Solicitor shall expeditiously provide such information, along with any comments or agency regulations, to the Office of the Inspector General, the Director of the Office of Government Ethics and to the Criminal Division, Department of Justice.

(c) Whenever the Solicitor has determined after appropriate review that there is reasonable cause to believe that a former employee described in §0.737-1 has violated 18 U.S.C. 207(a), (b) or (c) or the regulations of the Office of Personnel Management at 5 CFR part 737, the Solicitor may initiate an administrative disciplinary proceeding by providing the former employee with a notice of alleged violation.

(d) The notice of alleged violation shall include:

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(1) A statement of allegations (and the basis thereof) sufficiently detailed to enable the former employee to prepare an adequate defense;

(2) Notification of the right to a hearing; and

(3) An explanation of the method by which a hearing may be requested.

§0.737-4 Request for a hearing.

(a) Any former employee who is the subject of a notice of alleged violation issued by the Solicitor under §0.737-3 may within 15 days from the date of such notice request a hearing by writing to: The Office of the Under Secretary, U.S. Department of Labor, 200 Constitution Avenue, Washington, DC 20210.

(b) If the former employee fails to request a hearing in accordance with paragraph (a), the Under Secretary may then render a final administrative decision in the matter and, if appropriate, impose the sanctions specified in §0.737-10.

§0.737-5 Appointment of Examiner.

Whenever a notice of alleged violation has been issued and a hearing requested, the Under Secretary shall provide for the selection of a Department of Labor Administrative Law Judge, appointed in accordance with 5 U.S.C. 3105, to act as the Examiner with respect to the matter.

§0.737-6 Time, date and place of hearing.

(a) Any hearing shall be conducted at a reasonable time, date and place as determined by the Examiner.

(b) In setting a hearing date the Examiner shall give due regard to the former employee's need for:

(1) Adequate time to prepare a defense properly, and

(2) An expeditious resolution of allegations that may be damaging to his or her reputation.

§0.737-7 Hearing rights.

(a) The following rights shall be afforded at a hearing conducted before the Examiner:

(1) To represent oneself or to be represented by counsel,

(2) To introduce and examine witnesses and to submit physical evidence,

(3) To confront and cross-examine adverse witnesses,

(4) To present oral argument; and

(5) To obtain a transcript or recording of proceedings, on request.

(b) In a hearing under this subpart, the Federal Rules of Civil Procedure and Evidence do not apply. However, the Examiner may make orders and determinations regarding discovery, admissibility of evidence, conduct of examination and cross-examination, and similar matters as the Examiner deems necessary or appropriate to ensure orderliness of the proceedings and fundamental fairness to the parties.

(c) In any proceeding under this subpart, the Department must establish any violation by a preponderance of the evidence.

§0.737-8 Hearing decision and exceptions.

The Examiner shall make a determination exclusively on matters of record in the proceeding, and shall set forth in the hearing decision all findings of fact and conclusions of law relevant to the matters at issue. The hearing decision of the Examiner shall be considered final agency administrative action unless either party files exceptions in writing to the Under Secretary, U.S. Department of Labor, 200 Constitution Avenue, Washington, DC 20210 within 30 days from the date of such hearing decision.

§0.737-9 Decision on exceptions.

(a) Upon receipt of exceptions, the Under Secretary may afford both parties an opportunity to submit briefs or other appropriate statements in support of their respective positions.

(b) The Under Secretary shall issue a decision based solely on the record of the proceedings or those portions thereof cited by the parties to limit the issues.

(c) If the Under Secretary modifies or reverses the initial hearing decision of the Examiner, he or she shall specify such findings of fact and conclusions of law as are different from those of the Examiner.

§0.737-10 Administrative sanctions.

The Examiner (or the Under Secretary in any matter in which excep-

tions are filed or which is decided in accordance with §0.737-4(b)) may take appropriate action in the case of any individual found in violation of 18 U.S.C. 207(a), (b) or (c) or of the regulations at 5 CFR part 737 upon final administrative decisions by:

(a) Prohibiting the individual from making, on behalf of any other person (except the United States), any formal or informal appearance before, or, with the intent to influence, any oral or written communication to the Department of Labor on any matter of business for a period not to exceed five years, which may be accomplished by directing agency employees to refuse to participate in any such appearance or to accept any such communications; or

(b) Taking other appropriate disciplinary action.

§0.737-11 Judicial review.

Any person found to have participated in a violation of 18 U.S.C. 207(a), (b), or (c) or the regulations at 5 CFR part 737 may seek judicial review of the administrative determination in an appropriate United States district court.

APPENDIX A TO PART 0

Attention of the employees of the Department of Labor is hereby directed to the following statutory provisions:

(a) House Concurrent Resolution 175, 85th Congress, second session, 72A Stat, B12, the "Code of Ethics for Government Service."

(b) Chapter 11 of title 18 U.S.C., relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibition against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(f) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibition against political activities in subchapter III of chapter 73 of title 5 U.S.C. and 18 U.S.C. 602, 603, 607, and 608.

(q) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

Sec.

1.1 Purpose and scope.

1.2 Definitions.

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APPENDIX A TO PART 1

APPENDIX B TO PART 1

APPENDIX C TO PART 1

AUTHORITY: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 29 U.S.C. 259; 40 U.S.C. 276a–276a–7; 40 U.S.C. 276c; and the laws listed in appendix A of this part.

SOURCE: 48 FR 19533, Apr. 29, 1983, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to Part 1 appear at 61 FR 19984, May 3, 1996.

§ 1.1 Purpose and scope.

(a) The procedural rules in this part apply under the Davis-Bacon Act (946 Stat. 1494, as amended; 40 U.S.C. 276a–276a–7) and other statutes listed in appendix A to this part which provide for

the payment of minimum wages, including fringe benefits, to laborers and mechanics engaged in construction activity under contracts entered into or financed by or with the assistance of agencies of the United States or the District of Columbia, based on determinations by the Secretary of Labor of the wage rates and fringe benefits prevailing for the corresponding classes of laborers and mechanics employed on projects similar to the contract work in the local areas where such work is to be performed. Functions of the Secretary of Labor under these statutes and under Reorganization Plan No. 14 of 1950 (64 Stat. 1267, 5 U.S.C. appendix), except those assigned to the Administrative Review Board (see 29 CFR part 7), have been delegated to the Deputy Under Secretary of Labor for Employment Standards who in turn has delegated the functions to the Administrator of the Wage and Hour Division, and authorized representatives.

(b) The regulations in this part set forth the procedures for making and applying such determinations of prevailing wage rates and fringe benefits pursuant to the Davis-Bacon Act, each of the other statutes listed in appendix A, and any other Federal statute providing for determinations of such wages by the Secretary of Labor in accordance with the provisions of the Davis-Bacon Act.

(c) Procedures set forth in this part are applicable, unless otherwise indicated, both to general wage determinations for contracts in specified localities, and to project wage determinations for use on contract work to be performed on a specific project.

[48 FR 19533, Apr. 29, 1983, as amended at 50 FR 49823, Dec. 4, 1985]

§ 1.2 Definitions.¹

(a)(1) The *prevailing wage* shall be the wage paid to the majority (more than 50 percent) of the laborers or mechanics in the classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the *prevailing wage*

¹These definitions are not intended to restrict the meaning of the terms as used in the applicable statutes.